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February 11, 2019

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Cathy S. Gatson, Clerk
Kanawha County Circuit Clerk
Kanawha County Judicial Building
P. O. Box 2351
111 Court Street
Charleston, WV 25301

Mailing Address:
P.O. Box 129
Charleston, West Virginia 25321

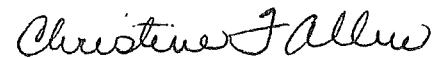
Re: Regional Development Authority of Charleston, Kanawha County, West Virginia
Metropolitan Region v. Corotoman, Inc. and John H. Wellford, III
Circuit Court of Kanawha County – Civil Action No. 18-C-1565

Dear Ms. Gatson:

I have enclosed for filing in the above matter an original Answer and Counterclaim along with a check in the amount of \$200.00 for the filing fee of the Counterclaim and 2 executed Civil Case Information Sheets.

Thank you for your assistance in this matter.

Very truly yours,



Christine F. Allen
Legal Assistant

/cfa

Enclosures as noted

cc: Melissa Foster Bird, Esq.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. 18-C-1565

Plaintiff(s)

Judge: Carrie Webster

Regional Development Authority of Charleston-

Kanawha County, West Virginia Metropolitan

Region

vs.

Days to

Answer

Type of Service

Defendant(s)

Corotoman, Inc.

Name

Street Address

City, State, Zip Code

II. TYPE OF CASE:

- | | |
|--------------------------------------------------------------------------|-------------------------------------------------------------|
| <input checked="" type="checkbox"/> General Civil | <input type="checkbox"/> Adoption |
| <input type="checkbox"/> Mass Litigation [As defined in T.C.R. 26.04(a)] | <input type="checkbox"/> Administrative Agency Appeal |
| <input type="checkbox"/> Asbestos | <input type="checkbox"/> Civil Appeal from Magistrate Court |
| <input type="checkbox"/> FELA Asbestos | <input type="checkbox"/> Miscellaneous Civil Petition |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Mental Hygiene |
| <input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ | <input type="checkbox"/> Guardianship |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Medical Malpractice |

III. JURY DEMAND: ☐ Yes ☒ No CASE WILL BE READY FOR TRIAL BY (Month/Year): 03 / 2020

**IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?**

☐ Yes ☒ No

IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
☐ Reader or other auxiliary aid for the visually impaired
☐ Interpreter or other auxiliary aid for the deaf and hard of hearing
☐ Spokesperson or other auxiliary aid for the speech impaired
☐ Foreign language interpreter-specify language: _____
☐ Other: _____

Attorney Name: Stephen L. Thompson WVSB# 3751

Firm: Barth & Thompson, P. O. Box 129

Address: Charleston, WV 25321

Telephone: (304) 342-7111

Representing:

- ☐ Plaintiff ☒ Defendant
☐ Cross-Defendant ☒ Cross-Complainant
☐ 3rd-Party Plaintiff ☐ 3rd-Party Defendant

☐ Proceeding Without an Attorney

Original and 1 copies of complaint enclosed/attached.

Dated: 02 / 11 / 2019

Signature: 

Plaintiff: Regional Development Authority of Charleston- , et al
vs.

Case Number: 18-C-1565

Defendant: Corotoman, Inc. and John H. Wellford, III , et al

**CIVIL CASE INFORMATION STATEMENT
DEFENDANT(S) CONTINUATION PAGE**

John H. Wellford, III, Individually

Defendant's Name

Street Address

Days to Answer: _____

City, State, Zip Code

Type of Service: _____

Defendant's Name

Days to Answer: _____

Street Address

Type of Service: _____

City, State, Zip Code

Defendant's Name

Days to Answer: _____

Street Address

Type of Service: _____

City, State, Zip Code

Defendant's Name

Days to Answer: _____

Street Address

Type of Service: _____

City, State, Zip Code

Defendant's Name

Days to Answer: _____

Street Address

Type of Service: _____

City, State, Zip Code

Defendant's Name

Days to Answer: _____

Street Address

Type of Service: _____

City, State, Zip Code

Defendant's Name

Days to Answer: _____

Street Address

Type of Service: _____

City, State, Zip Code

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

REGIONAL DEVELOPMENT
AUTHORITY OF CHARLESTON-
KANAWHA COUNTY, WEST VIRGINIA
METROPOLITAN REGION,

Plaintiff,

Vs.

Civil Action No. 18-C-1565
Judge Carrie Webster

COROTOMAN, INC., and JOHN H.
WELLFORD, III, INDIVIDUALLY,

Defendants.

ANSWER AND COUNTERCLAIM

Defendants Corotoman, Inc. and John H. Wellford, III, Individually (collectively the "Defendants"), by their undersigned counsel, hereby answer the Complaint filed by the Plaintiff in the above-captioned case (the "Complaint"), as follows

1. Defendants admit the allegation contained in Paragraph 1 of the Complaint that the Plaintiff is a West Virginia public corporation with its principal place of business in Charleston, but as to the remainder of the allegations would say that West Virginia Code §§ 7-12-1 *et seq.* speaks for itself.

2. Defendants admit the allegation contained in Paragraph 2 of the Complaint.

3. Defendants admit the allegations contained in Paragraph 3 of the Complaint.

4. The allegations contained in Paragraph 4 of the Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint.

5. With regard to the allegations contained in Paragraph 5 of the Complaint, the Defendants admit that they either reside in or primarily do business in Kanawha County, West Virginia. The remainder of the allegations contained in Paragraph 5 state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint and therefore deny the same and demand strict proof thereof.

6. With regard to the allegations contained in Paragraph 6 of the Complaint, the Defendants admit that they either reside in and operate a business in Kanawha County, West Virginia. The remainder of the allegations contained in Paragraph 6 state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants deny any conduct on their behalf gives rise to a claim by the Plaintiff and deny the allegations contained in Paragraph 6 of the Complaint.

7. In response to the allegations contained in Paragraph 7 of the Complaint, the Defendants state that West Virginia Code §7-12-1 speaks for itself.

8. The Defendants admit the allegations contained in Paragraph 8 of the Complaint.

9. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint and therefore deny the same and demand strict proof thereof.

10. The Defendants admit the allegations contained in Paragraph 10 of the Plaintiff's Complaint, except as to Defendant of real estate taxes as to lack sufficient knowledge to form a belief as to the truth of the same and therefore deny the same and demand strict proof thereof.

11. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and therefore deny the same and demand strict proof thereof.

12. With regard to the allegations contained in Paragraph 12 of the Complaint, the Defendants admit that "at all times, it was agreed and understood that Corotoman was to perform all the duties of the Landlord of the premise." As to the remaining allegations, the Defendants lack knowledge or information sufficient to form a belief as to the truth of the same and therefore deny the same and demand strict proof thereof.

13. The Defendants admit the existence of the document referenced in Paragraph 13 of the Plaintiff's Complaint, aver that the document speaks for itself, and, except as specifically so admitted, deny all other of the allegations of said paragraph and demand strict proof thereof.

14. The Defendants admit the allegations contained in Paragraph 14 of the Plaintiff's Complaint.

15. The Defendants admit the existence of the document referenced in Paragraph 15 of the Plaintiff's Complaint, aver that the document speaks for itself, and, except as specifically so admitted, deny all other of the allegations of said paragraph and demand strict proof thereof.

16. The Defendants admit the allegations contained in Paragraph 16 of the Plaintiff's Complaint.

17. The Defendants admit the allegations contained in Paragraph 17 of the Plaintiff's Complaint.

18. The Defendants admit the allegations contained in Paragraph 18 of the Plaintiff's Complaint.

19. The Defendants admit the allegations contained in Paragraph 19 of the Plaintiff's Complaint.

20. The Defendants admit the allegations contained in Paragraph 20 of the Plaintiff's Complaint.

21. The Defendants admit the allegations contained in Paragraph 21 of the Plaintiff's Complaint.

22. The Defendants admit the allegations contained in Paragraph 22 of the Plaintiff's Complaint.

23. The Defendants deny the allegations contained in Paragraph 23 of the Plaintiff's Complaint and demand strict proof thereof.

24. The Defendants admit the allegations contained in Paragraph 24 of the Plaintiff's Complaint.

25. The Defendants admit the allegations contained in Paragraph 25 of the Plaintiff's Complaint.

26. The Defendants admit the allegations contained in Paragraph 26 of the Plaintiff's Complaint.

27. The Defendants admit the allegations contained in Paragraph 27 of the Plaintiff's Complaint.

28. The Defendants admit the allegations contained in Paragraph 28 of the Plaintiff's Complaint.

29. The Defendants deny the allegations contained in Paragraph 29 of the Plaintiff's Complaint and demand strict proof thereof.

30. The Defendants deny the allegations contained in Paragraph 30 of the Plaintiff's Complaint and demand strict proof thereof.

31. The Defendants admit the allegations contained in Paragraph 31 of the Plaintiff's Complaint.

32. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint and therefore deny the same and demand strict proof thereof.

33. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint and therefore deny the same and demand strict proof thereof.

34. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 34 of the Complaint and therefore deny the same and demand strict proof thereof.

35. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint and therefore deny the same and demand strict proof thereof.

36. The Defendants repeat and reallege their responses to the allegations in Paragraphs 1 through 35 of the Complaint as if fully restated herein.

37. The Defendants admit the allegations contained in Paragraph 37 of the Plaintiff's Complaint.

38. The Defendants deny the allegations contained in Paragraph 38 of the Plaintiff's Complaint and demand strict proof thereof.

39. The Defendants admit the allegations contained in Paragraph 39 of the Plaintiff's Complaint.

40. The Defendants admit the allegations contained in Paragraph 40 of the Plaintiff's Complaint.

41. The Defendants deny the allegations contained in Paragraph 41 of the Plaintiff's Complaint and demand strict proof thereof.

42. The allegations contained in Paragraph 42 of the Plaintiff's Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42 of the Complaint, therefore deny the same and demand strict proof thereof.

43. The Defendants deny the allegations of breach of contract contained in Paragraph 43 of the Plaintiff's Complaint and that the same resulted in damages to the Plaintiff. With regard to the remaining allegations in Paragraph 43, the Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43 of the Complaint, therefore deny the same and demand strict proof thereof.

44. The Defendants deny the allegations of breach of contract contained in Paragraph 44 of the Plaintiff's Complaint and that the same resulted in damages to the Plaintiff. With regard to the remaining allegations in Paragraph 44, the Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 44 of the Complaint, therefore deny the same and demand strict proof thereof.

45. The Defendants lack knowledge or information sufficient to form a belief as to the

truth of the allegations contained in Paragraph 45 of the Complaint, therefore deny the same and demand strict proof thereof.

46. The Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 46 of the Complaint, therefore deny the same and demand strict proof thereof.

47. The Defendants repeat and reallege their responses to the allegations in Paragraphs 1 through 46 of the Complaint as if fully restated herein.

48. The Defendants admit the allegations contained in Paragraph 48 of the Plaintiff's Complaint.

49. The Defendants deny the allegations contained in Paragraph 49, and assert that the REPA speaks for itself on the Plaintiff's Complaint.

50. The Defendants deny the allegations contained in Paragraph 50 of the Complaint and demand strict proof thereof.

51. The Defendants deny the allegations contained in Paragraph 51 of the Complaint and demand strict proof thereof.

52. The Defendants deny the allegations contained in Paragraph 52 of the Complaint and demand strict proof thereof.

53. The Defendants lack the allegations of breach of contract contained in Paragraph 53 of the Plaintiff's Complaint, and that the same resulted in damages to the Plaintiff. With regard to the remaining allegations in Paragraph 53, the Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53 of the Complaint, therefore deny the same and demand strict proof thereof.

54. The Defendants deny the allegations contained in Paragraph 54 of the Complaint and demand strict proof thereof.

55. The Defendants repeat and reallege their responses to the allegations in Paragraphs 1 through 54 of the Complaint as if fully restated herein.

56. The Defendants deny the allegations contained in Paragraph 56 of the Complaint and demand strict proof thereof.

57. The allegations contained in Paragraph 57 of the Plaintiff's Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 57 of the Complaint, therefore deny the same and demand strict proof thereof.

58. The allegations contained in Paragraph 58 of the Plaintiff's Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 58 of the Complaint, therefore deny the same and demand strict proof thereof. By way of and affirmative response Defendants deny that Plaintiffs are entitled to recover of the Defendants in any amount.

59. The Defendants deny the allegations contained in Paragraph 59 of the Plaintiff's Complaint and demand strict proof thereof. By way of and affirmative response Defendants deny that Plaintiffs are entitled to recover of the Defendants in any amount.

60. The Defendants deny the allegations contained in Paragraph 60 of the Complaint and demand strict proof thereof.

61. The Defendants deny the allegations contained in Paragraph 61 of the Plaintiff's Complaint and demand strict proof thereof.

62. The Defendants repeat and reallege their responses to the allegations in Paragraphs 1 through 61 of the Complaint as if fully restated herein.

63. In response to the allegations contained in Paragraph 63 of the Plaintiff's Complaint, the Defendants state that West Virginia Code §§ 55-13-1 *et seq.* speaks for itself.

64. The Defendants deny the allegations contained in Paragraph 64 of the Plaintiff's Complaint and demand strict proof thereof.

65. The Defendants admit the allegations contained in Paragraph 65 of the Plaintiff's Complaint that RDA terminated the rights of the Defendants, but deny any basis or justification for such termination, therefore the Defendants deny the allegations of wrongful conduct.

66. The Defendants deny the allegations contained in Paragraph 66 of the Plaintiff's Complaint and demand strict proof thereof, and deny that the Plaintiff is entitled to recover of the Defendants in any amount.

67. The Defendants deny the allegations contained in Paragraph 67 of the Plaintiff's Complaint and demand strict proof thereof, and deny that the Plaintiff is entitled to recover of the Defendants in any amount.

68. The Defendants repeat and reallege their responses to the allegations in Paragraphs 1 through 67 of the Complaint as if fully restated herein.

69. The allegations contained in Paragraph 69 of the Plaintiff's Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth of the

allegations contained in Paragraph 69 of the Complaint, and deny the same. Defendants deny that Plaintiff is entitled to recover of them in any amount.

70. The Defendants admit the allegations contained in Paragraph 70 of the Plaintiff's Complaint.

71. The Defendants admit the allegations contained in Paragraph 71 of the Plaintiff's Complaint and by way of an affirmative defense assert that Defendants performed their obligations under the REPA.

72. The Defendants deny the allegations contained in Paragraph 72 of the Plaintiff's Complaint and demand strict proof thereof.

73. The allegations contained in Paragraph 73 of the Plaintiff's Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants deny the truth of the allegations contained in Paragraph 73 of the Complaint and demand strict proof thereof.

74. The Defendants deny the allegations contained in Paragraph 74 of the Plaintiff's Complaint and demand strict proof thereof.

75. The Defendants deny the allegations contained in Paragraph 75 of the Plaintiff's Complaint and demand strict proof thereof. Defendants deny that Plaintiff is entitled to recover of them in any amount.

76. The Defendants repeat and reallege their responses to the allegations in Paragraphs 1 through 75 of the Complaint as if fully restated herein.

77. The allegations contained in Paragraph 77 of the Plaintiff's Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary,

Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 77 of the Complaint, and therefore deny the same and demand strict proof thereof. Defendants deny that the Plaintiff is entitled to recover of them in any amount, and further deny any liability or liability for claims for damages and deny the same.

78. The allegations contained in Paragraph 78 of the Plaintiff's Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants deny that the Plaintiff is entitled to recover of them in any amount, and further deny any liability or liability for claims for punitive damages and deny the same.

79. The Defendants deny the allegations contained in Paragraph 79 of the Plaintiff's Complaint and demand strict proof thereof.

80. The allegations contained in Paragraph 80 of the Plaintiff's Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants the truth of the allegations contained in Paragraph 80 of the Complaint, and further deny any liability for payment of damages to the Plaintiff.

81. In response to the allegations contained in Paragraph 81 of the Plaintiff's Complaint, the Defendants state that West Virginia Code §60-3-20 speaks for itself.

82. The allegations contained in Paragraph 82 of the Plaintiff's Complaint state legal conclusions as to which no responsive pleading is required. To the extent a response is necessary, Defendants deny the truth of the allegations contained in Paragraph 82 of the Complaint, and further deny any liability for payment of damages to the Plaintiff.

83. The Defendants deny the allegations contained in Paragraph 83 of the Plaintiff's Complaint and demand strict proof thereof.

84. The Defendants deny the allegations contained in Paragraph 84 of the Plaintiff's Complaint and demand strict proof thereof.

85. The Defendants admit the allegations contained in Paragraph 85 of the Plaintiff's Complaint.

86. The Defendants deny the allegations contained in Paragraph 86 of the Plaintiff's Complaint and demand strict proof thereof.

87. The Defendants admit the allegations contained in Paragraph 87 of the Plaintiff's Complaint.

88. The Defendants admit the allegations contained in Paragraph 88 of the Plaintiff's Complaint.

89. The Defendants deny the allegations contained in Paragraph 89 of the Plaintiff's Complaint and demand strict proof thereof.

90. The Defendants deny the allegations contained in Paragraph 90 of the Plaintiff's Complaint and demand strict proof thereof.

91. The Defendants deny that their conduct constitutes embezzlement and demand strict proof thereof. The Defendants would further say that West Virginia Code §61-3-20 speaks for itself, and further deny any liability for payment of damages to the Plaintiff.

92. With regard to the allegations contained in Paragraph 92, the Defendants admit that they have not been charged with any crime. The Defendants deny that their conduct is "unprosecuted criminal conduct" as alleged in Paragraph 92 and demand strict proof thereof.

93. The Defendants deny the allegations contained in Paragraph 93 of the Plaintiff's Complaint and demand strict proof thereof. Defendants deny that the Plaintiff is entitled to

recover of them in any amount, and further deny any liability or liability for claims for punitive damages and deny the same.

94. Answering the Plaintiff's prayer for relief, Defendants deny that the Plaintiffs are entitled to any relief of and from the Defendants.

95. No response is required from Defendants as to any remaining allegations or claims in the Complaint, but to the extent any response is deemed to be required, Defendants deny any and all of such allegations.

AFFIRMATIVE AND OTHER DEFENSES

Without assuming the burden of proof on any matters where that burden rests on Plaintiffs, Defendants assert the following affirmative and other defenses to the Complaint. Defendants lack knowledge or information sufficient to form a belief as to whether or not they have other, as yet unstated, defenses. Defendants reserve the right to assert, and hereby give notice that they intend to rely upon, any other defense that may become available or appear during discovery or otherwise, and reserve the right to amend this answer to assert any such defense.

FIRST DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

SECOND DEFENSE

The Defendants affirmatively state that the Plaintiff does not have a legal basis for the imposition of punitive or exemplary damages under the Constitution of West Virginia, and imposition of punitive damages in this case would violate the Constitution of West Virginia. Alternatively any punitive damages recovered must be limited as required by the Constitution of

West Virginia.

THIRD DEFENSE

Defendants reserve unto themselves the affirmative defense that Plaintiff's request for punitive damages cannot be sustained because an award of punitive damages under state law by a jury that (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part on the basis of discriminatory characteristics, including without limitation, the residence, wealth, and corporate status of Defendants, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, (5) is not properly instructed regarding the Plaintiff's burden of proof with respect to each and every element of a claim for punitive damages, or (6) is not subject to adequate trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards, violates Defendants' due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and by the Constitution of the State of West Virginia, and would be improper under the common law, and public policies of the states.

FOURTH DEFENSE

The Defendants state that they acted in good faith and without malice or intent to injure the

Plaintiff.

FIFTH DEFENSE

The Defendants state that the Plaintiff's claims are barred, in whole or in part, by the doctrines of contributory and comparative fault.

SIXTH DEFENSE

The Defendants state that the relief the Plaintiff seeks would be disproportionate to Plaintiff's alleged harm, would be excessive, and would violate Defendants' constitutional rights.

SEVENTH DEFENSE

The Defendants aver that Plaintiff's claims may be barred in whole or in part by the applicable statute(s) of limitations and/or the doctrine of laches.

EIGHTH DEFENSE

The Defendants state that they acted reasonably and prudently under the circumstances.

NINTH DEFENSE

The Defendants aver that Plaintiff's claims have been waived and/or Plaintiff is estopped in whole or in part, by the documents executed by and on behalf of the Plaintiff.

TENTH DEFENSE

The Defendants aver that the Plaintiff's claims are contrary to the unambiguous language of the contract documents.

ELEVENTH DEFENSE

The Defendants aver that Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff's damages, if any, were caused by their own acts or omissions, or other acts or omissions of third parties other than Defendants.

TWELVETH DEFENSE

The Defendants aver that Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff has failed to mitigate its damages.

THIRTEENTH DEFENSE

The Defendants aver that Plaintiff's claims may be barred, in whole or in part, by the principals of collateral estoppel and judicial estoppel.

FOURTEENTH DEFENSE

The Defendants aver that Plaintiff's claims may be barred by the doctrine of assumption of risk.

FIFTEENTH DEFENSE

The Defendants aver that Plaintiff's claims are barred by the terms of the relevant contract and loan documents.

SIXTEENTH DEFENSE

The Defendants aver that Plaintiff's claims are barred by the defense of impossibility of performance, due to the actions of the Plaintiff or others in concert with the Plaintiff.

WHEREFORE, Defendants Corotoman, Inc. and John H. Wellford, III, by counsel, respectfully request the Court to dismiss Plaintiff's Complaint and all claims therein with prejudice and to render judgment in favor of Defendants on each and every claim and request for relief in Plaintiff's Complaint, denying all relief sought by the Plaintiff, and that Defendants be awarded their costs expended in defending this action, and for such other and further relief as the Court deems appropriate.

COUNTERCLAIM

Count One

By way of their Counterclaim the Defendants do say and allege as follows:

1. The Defendants do incorporate by reference the matters set forth in their Answer to the Complaint filed against them herein as if the same were set forth herein *verbatim*.
2. Among the documents executed and delivered as a part of the transactions which are described in the Complaint filed in this matter was a Real Estate Purchase Agreement (the "REPA") dated July 23, 1999, among Corotoman, Inc., ("Corotoman") the Regional Development of Charleston-Kanawha County West Virginia Metropolitan Region (the "RDA"), and John H. Wellford, III ("Wellford"). A copy of the REPA is attached hereto as Exhibit A and is incorporated herein by reference.
3. Included within the REPA were certain rights granted to Corotoman with respect to the Ticketmaster building in the NorthGate development (the "Premises").
4. Specifically, the REPA provided the following rights to Corotoman:
 9. Corotoman hereby **reserves** the prior and exclusive right at any time to repurchase the Premises and all the rights conveyed or transferred to RDA in connection therewith at any time, upon and in consideration of the (i) payment in full by Corotoman **of the Infrastructure (sic) Loan, (ii) payment or assumption of the Bank Loan**, and (iii) payment of foregone real estate taxes as set forth in paragraph 11 hereof. RDA hereby recognizes and agrees to Corotoman's repurchase rights, and agrees that the conveyance **of the Premises and assignment of any lease affecting the Premises** made pursuant to the rights reserved shall be with covenants of special warranty and free of all liens and encumbrances arising through RDA, excepting only those securing the **Bank Loan** if assumed by Corotoman. Corotoman shall have the obligation to repurchase the Premises for the same terms as set forth in the first sentence of this Paragraph 9 at such time as the Lease expires, terminates, or is otherwise no longer effective. (Emphasis in original)

5. In the summer and fall of 2018 Corotoman and Wellford, as its agent, negotiated the "repurchase" of the Premises as part of a transaction which would have resulted, at closing, of the satisfaction of the conditions set forth in the aforesaid paragraph 9 of the REPA, to-wit: (i) payment in full by Corotoman of the Infrastructure (*sic*) Loan, (ii) payment or assumption of the Bank Loan, and (iii) payment of "foregone" real estate taxes as set forth in paragraph 11 thereof.

6. Notwithstanding the rights of Corotoman as set forth in the aforesaid paragraph 9 of the REPA, agents of the Plaintiff failed and refused to discuss with agents of Corotoman the proposed transaction so as to allow the repurchase of the Premises to be consummated as was granted to Corotoman in the aforesaid paragraph 9 of the REPA.

7. In addition to satisfaction of the indebtedness and the payment of the real estate taxes referenced in the aforesaid paragraph 9 of the REPA, agents of Corotoman attempted to advise agents of the Plaintiff that Corotoman would be selling the Premises to a third party, including the assignment of the Ticketmaster lease affecting the Premises as contemplated by the aforesaid paragraph 9 of the REPA, and as a result would not adversely affect the rights of Ticketmaster to continue to operate the call center at the Premises.

8. Corotoman and its agent attempted to advise the agents of the Plaintiff that Corotoman would benefit financially from the transaction.

9. The failure and refusal of the agents of the Plaintiff to honor the repurchase rights of Corotoman as the same are set forth in paragraph 9 of the REPA constitute a breach of the REPA.

10. As a direct and proximate result of the breach by the Plaintiff of the REPA, to-wit: by not accepting the rights of Corotoman to repurchase the Premises and the rights conveyed or transferred to RDA, the Defendants have been damaged.

11. The Defendants are entitled to recover of and from the Plaintiff an award of damages arising out of their breach of the rights granted to Corotoman in the REPA.

Count Two

12. The Defendants incorporate by reference the allegations of Count One of their Counterclaim as if the same was set forth herein *verbatim*.

13. Included within the REPA were certain representations, warranties, covenants and agreements granted to Corotoman.

14. Including among the representations, warranties, covenants and agreements were the following:

10. Knowing that Corotoman is relying thereon, RDA hereby represents and warrants, and covenants and agrees with Corotoman as follows:

a) RDA and its officers, directors, employees, and servants shall not by any act or Neglect breach or degrade the Lease, **any rights or obligations under this Agreement, the Long Term Loans, and the Loan Documents**, or the rights or obligations of the parties thereunder. RDA shall not by act or neglect interfere with, and shall cooperate with, Corotoman in the performance of Corotoman's obligations and the exercise of Corotoman's rights under this Agreement. RDA shall not by act or neglect interfere with, and shall cooperate with, the performance of the obligations of the parties to the Lease under the Lease, **the Long Term Loans and the Loan Documents and the exercise of the rights of the parties to the Lease under the Lease, the Long Term Loans and the Loan Documents are personal to RDA or may only be preformed by RDA, (for example and not by way of limitation, the provision of RDA's financial statements to Infrastructure)**, RDA will timely perform such obligations. (Emphasis in original).

15. The Plaintiff has breached the following representations, warranties,

covenants and agreements to the Defendants as the same are set forth in the aforesaid paragraph 10 of the REPA:

- A. RDA and its officers, directors, employees, and servants have neglected rights or obligations under the REPA;
- B. RDA and its officers, directors, employees, and servants have breached rights or obligations under the REPA;
- C. RDA and its officers, directors, employees, and servants have neglected the rights of a party under the REPA;
- D. RDA and its officers, directors, employees, and servants have breached the rights of a party under the REPA;
- E. RDA and its officers, directors, employees, and servants have neglected and failed to cooperate with Corotoman in the exercise of Corotoman's rights under the REPA;
- F. RDA and its officers, directors, employees, and servants have interfered with Corotoman in the exercise of Corotoman's rights under the REPA, and
- G. Has otherwise acted contrary to the representations, warranties, covenants and agreements to the Defendants as the same are set forth in the aforesaid paragraph 10 of the REPA.

16. As a direct and proximate result of the breach by the Plaintiff and its officers, directors, employees, and servants of the representations, warranties, covenants and agreements to

the Defendants as the same are set forth in the aforesaid paragraphs the Defendants have been damaged.

17. The Defendants are entitled to recover of and from the Plaintiff an award of damages arising out of the breach of the representations, warranties, covenants and agreements granted to Corotoman in the REPA.

Count Three

18. The Defendants incorporate by reference the allegations of Counts One and Two of their Counterclaim as if the same was set forth herein *verbatim*.

19. In breach of and in direct contravention of the representations, warranties, covenants and agreements granted to Corotoman in paragraphs 9 and 10.(a) of the REPA, on or about October 17, 2018, the Plaintiff terminated the rights of the Defendant Corotoman in the Lease and to repurchase the Premises and the rights conveyed or transferred to RDA.

20. The Plaintiff's termination of the rights of the Defendant Cororoman in the Lease, and the right to repurchase the Premises and the rights conveyed or transferred to RDA as the same are set forth in paragraph 9 of the REPA, constitute a breach of the REPA.

21. As a direct and proximate result of the Plaintiff's termination of the rights of the Defendant Cororoman in the Lease, and the right to repurchase the Premises and the rights conveyed or transferred to RDA as the same are set forth in paragraph 9 of the REPA, the Defendants have been damaged.

22. The Defendants are entitled to recover of and from the Plaintiff an award of damages arising out of their breach of the rights granted to Corotoman in the REPA.

Count Four

23. The Defendants incorporate by reference the allegations of Counts One through Three of their Counterclaim as if the same were set forth herein *verbatim*.

24. The Defendants assert that the REPA and the other documents in the transaction to which it and the Plaintiff are parties constitute contracts.

25. Defendants assert that the REPA and the other documents in the transaction to which it and the Plaintiff are parties are contracts which include implied covenants of good faith and fair dealing.

26. The actions of the Plaintiff constitute a breach of the implied covenants of good faith and fair dealing.

27. The Defendants have been damaged by reason of the actions and conduct of the Plaintiff and are entitled to recover damages of and from the Plaintiff by reason thereof.

Count Five

28. The Defendants incorporate by reference the allegations of Counts One through Four of their Counterclaim as if the same were set forth herein *verbatim*.

29. The Plaintiff has intentionally and improperly interfered with the existing contractual business relationship between the Defendants and their third party purchasers of the Premises.

30. The acts of the Plaintiff constitute wrongful, oppressive, or unconscionable conduct and further constitute tortious interference with the contract between the Defendants and their third party purchasers of the Premises.

31. The Defendants have been injured and damaged by reason of the actions and conduct of the Plaintiff and is entitled to recover damages of and from the Plaintiff by reason thereof.

Count Six

32. The Defendants incorporate by reference the allegations of Counts One through Five of their Counterclaim as if the same were set forth herein verbatim.

33. The purchase agreement between the Defendants and third parties purchasers of the Premises constitutes a contract.

34. The actions of the Plaintiff constitute tortious interference with the contract between the Defendants and their third party purchasers of the Premises.

35. The Defendants have been damaged by reason of the actions and conduct of the Plaintiff in interfering with the contract between the Defendants and their third party purchasers of the Premises and are entitled to recover damages of and from the Plaintiffs by reason thereof.

Count Seven

36. The Defendants incorporate by reference the allegations of Counts One through Six of their Counterclaim as if the same were set forth herein verbatim.

37. The combination of the Plaintiffs acting in concert with a third party constitutes a civil conspiracy to deprive the Defendants of their rights.

38. The acts of the Plaintiff and the third party with whom it acted in concert constitute wrongful, oppressive, or unconscionable conduct.

39. The Defendants have been damaged by reason of the actions and conduct of the Plaintiff and are entitled to recover damages of and from the Plaintiff by reason thereof.

Count Eight

40. The Defendants incorporate by reference the allegations of Counts One through Seven of their Counterclaim as if the same were set forth herein verbatim.

41. The actions of the Plaintiff were undertaken willfully and with the intention to cause harm to the Defendants.

42. Alternatively, the actions of the Plaintiff were undertaken willfully and in reckless disregard of the rights of the Defendants.

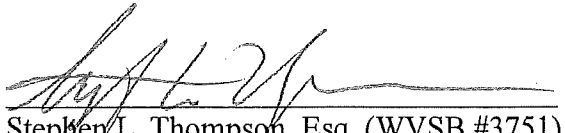
43. The Defendants are entitled to recover of and from the Plaintiff an award of punitive damages to deter the Plaintiff and others of like mind from the same or similar conduct in the future.

WHEREFORE the Defendants pray for the following relief:

1. That the Plaintiffs' Complaint filed against them be dismissed;
2. That they do recover of and from the Plaintiff their attorneys' fees incurred in and
3. That they do recover an award of general damages of and from the Plaintiff by reason of its conduct;
4. That they do recover an award of punitive damages of and from the Plaintiff so as to deter the Plaintiff and others of like mind from the same or similar conduct;
5. That they do recover such other relief as to the Court may award to them, and

6. That they do recover all of their costs incurred in and about this matter.

COROTOMAN, INC., and
JOHN H. WELLFORD, III
By Their Counsel



Stephen L. Thompson, Esq. (WVSB #3751)
Counsel for the Defendants
Barth & Thompson
P. O. Box 129
Charleston, WV 25321
(304) 342-7111 (Telephone)
(304) 342-6215 (Facsimile)

Real Estate Purchase Agreement Containing Reservations and Covenants

This Agreement ("Agreement") is made and entered into the 23rd day of July, 1999, by and between **Corotoman, Inc.**, a West Virginia corporation, ("Corotoman") and the **Regional Development Authority of Charleston-Kanawha County, West Virginia Metropolitan Region** ("RDA") a West Virginia statutory corporation, and **John H. Wellford, III**, personally ("Wellford").

Whereas, an opportunity for economic growth and employment of citizens of The City of Charleston, County of Kanawha, State of West Virginia was presented by the potential relocation of a Ticketmaster L.L.C., a Delaware limited liability company, ("Ticketmaster") call center to The City of Charleston, County of Kanawha, State of West Virginia; and

Whereas, to provide Ticketmaster a relocation alternative comparable to other potential locations for Ticketmaster in other states, counties and other cities, The City of Charleston has adopted Resolution No. 038-98, as amended January 18, 1999, and has thereby agreed to contribute \$400,000.00 to the cost of construction of the office building for Ticketmaster, to be recouped from B & O Taxes to be paid by Ticketmaster; and

Whereas, as its portion of an offer to provide Ticketmaster a relocation alternative comparable to other potential locations for Ticketmaster in other states, counties and other cities, RDA has, subject to the terms and conditions hereof, agreed to purchase and hold title to the Premises (hereafter defined) and permit the same to be used by Ticketmaster upon the terms set forth in the Lease (hereafter defined); and

Whereas, Corotoman is the developer of property commonly referred to as NorthGate, in the City of Charleston, County of Kanawha, and Ticketmaster has selected a parcel in NorthGate for the relocation of its call center; and

Whereas, Corotoman has entered into a Commercial Lease with Ticketmaster dated as of January 14, 1999 (the "Lease") a copy of which is attached hereto as Exhibit 1

Ex. A

which, among other things, requires that Corotoman construct a building on the parcel chosen by Ticketmaster, being Lot E-1 situate in NorthGate, City of Charleston, Kanawha County, West Virginia, and more particularly described as set forth in Exhibit 2 hereof (the "Premises" including said Lot E-1, the Building to be constructed thereon, and anything located therein or thereon and owned by Corotoman or RDA, and as more particularly described in the Lease) for use as office space for Ticketmaster; and

Whereas, Corotoman has agreed to sell the Premises to RDA, but to continue to perform the duties of the Landlord under the Lease, to indemnify RDA, to repurchase the Premises upon expiration or termination of the Lease, to reimburse Kanawha County for Real Estate taxes foregone at the end of the lease term, and Wellford has agreed to guarantee the performance of Corotoman; and

Whereas, First Community Bank , N.A. ("Bank") has agreed to provide certain long term financing as set forth in the Commitment Letter (such long term financing, together with the promissory note, deed of trust, and other documents executed in connection therewith is hereinafter referred to as the "Bank Loan") dated May 13, 1999, attached hereto as Exhibit 3 and incorporated herein.

Whereas, the West Virginia Infrastructure and Jobs Development Council ("Infrastructure") has agreed to provide certain long term financing as set forth and subject to the terms and conditions of the commitment letter attached hereto as Exhibit 4 (such long term financing, including any note, loan agreement, deed of trust, assignment of rents, guarantee, and other documents executed in connection therewith, is hereinafter referred to as the "Infrastructure Loan"; the Infrastructure Loan and Bank Loan being hereinafter referred to collectively as the "Long Term Loans"), to finance the purchase of the Premises by RDA; and

NOW THEREFORE, this legal contract and agreement is made and entered into in consideration of the mutual agreements herein and for the monies paid and to be paid as provided herein, and the parties mutually agree as follows:

1. **Concurrent** with the funding of the Long Term Loans to be made to RDA pursuant to the commitment letters attached hereto as Exhibits 3 and 4, RDA agrees to purchase from Corotoman and Corotoman agrees to sell to RDA the Premises.

2. RDA agrees to **convey** to Corotoman **all of the proceeds received by RDA** from the Long Term Loans immediately upon receipt thereof, **and has delivered to Corotoman** the sum of \$400,000.00 previously funded by the City of Charleston as contemplated by the resolution recited above, said sums totaling Three Million Eight Hundred Ten Thousand Dollars (\$3,810,000.00) (the "Purchase Price") as consideration for the purchase of the Premises and the assignment to RDA of the Lease. Of the Purchase Price, the sum of \$400,000.00 funded through The City of Charleston was paid to Corotoman upon its receipt by RDA, and the balance of the Purchase Price shall be paid the day of funding of the Long Term Loans from the proceeds of such Long Term Loans. No other consideration shall be paid by RDA to Corotoman for the purchase of the Premises and assignment of the Lease.

3. The Closing (delivery of deed, releases, and assignment of the Lease in exchange for the Purchase Price), shall occur on the date the Long Term Loans are funded.

4. The Purchase Price will be paid by wire transfer of assigned loan proceeds and the prior delivery of the sum of \$400,000 received from the City of Charleston in connection with the resolution recited above. The Lease shall be assigned by Corotoman to RDA by assignment in form attached hereto as Exhibit 5.

5. The Deed shall be in form generally acceptable to counsel, with covenants of general warranty, and shall contain the repurchase rights and obligations, and covenants against transfer, liens and encumbrances set forth herein. Corotoman shall pay all costs incurred in connection with the Closing.

6. Corotoman hereby agrees to strictly and timely perform all of the obligations of the Landlord in the Lease, and to pay all amounts payable by Landlord under the Lease, and Corotoman is hereby granted the sole and exclusive right to receive all rent and other payments due Landlord under the Lease and to perform all of the obligations of Landlord

under the Lease so long as such obligations are met and fulfilled. Corotoman shall protect, defend, indemnify and hold harmless RDA from all claims, demands, penalties, fines, and other costs incurred by RDA in connection with the review, approval and assignment of the Lease, the acquisition of the Premises and the funding of the Long Term Loans including any attorneys fees, expert witness fees, and other costs incurred in connection with the Lease, excepting only claims by Corotoman against RDA for intentional breach of, or default in or under this Agreement. Nothing herein shall prevent Corotoman from disputing any claim in connection with the Lease, or otherwise acting to protect the interests of Corotoman and RDA in connection with the Lease, but the right to dispute and protect shall not relieve Corotoman of its obligations to protect, defend, indemnify and hold harmless RDA as set forth herein.

7. Corotoman shall promptly pay on behalf of RDA all amounts due on the Long Term Loans. Corotoman is hereby authorized and directed to, and shall, perform all of the obligations of RDA under the Loan Agreements (the "Loan Agreements") by and between RDA and Infrastructure, and RDA and Bank, in connection with the Long Term Loans. Corotoman is hereby authorized and directed to, and shall, keep and maintain all of the covenants of RDA under each of the Deeds of Trust (the "Deeds of Trust") and Assignments of Rents and Leases (the "Assignments of Rent") executed in favor of Infrastructure and Bank in connection with the Long Term Loans. The funding of such loans and the truth as of the date of execution hereof and at Closing of the representations and warranties of Corotoman as set forth herein shall be conditions to RDA's obligation to purchase the Premises. The Loan Agreements, Deeds of Trust, Assignments of Rent and all other documents evidencing the Long Term Loans or otherwise executed and delivered by RDA and Wellford pursuant to the terms of the Loan Agreements are hereinafter collectively referred to as the "Loan Documents."

8. Corotoman hereby represents and warrants to RDA, knowing that RDA is relying on Corotoman as an inducement to enter into this agreement, and covenants and agrees with RDA as follows:

(a) That Corotoman has duly complied with, and the location, occupancy, use and operation of the Premises is in compliance with the provisions of all federal, state,

and local environmental, health and safety and building laws, codes and ordinances and all rules and regulations promulgated thereunder and all permits issued thereunder.

(b) That Corotoman has received no notice of, and has no knowledge of, any fact(s) which might constitute violation(s) of any federal, state, or local environmental, health or safety and building laws, codes or ordinances, and any rules or regulations promulgated thereunder, which relate to the use, ownership or occupancy of the Premises.

(c) That the Premises contains no hazardous substance or waste (including petroleum products and petroleum by-products or any other substance or solid waste) that would violate any federal, state or local law, statute, ordinance, rule or regulation. That at Closing, the Premises shall be free from contamination by regulated or hazardous substances or dangerous materials (including without limiting the generality of the foregoing petroleum, petroleum by-products, asbestos, PCB's and explosives).

(d) That Corotoman has sufficient corporate authority to execute this Agreement and any and all other documents, including the deed, to effectuate the sale of the Premises.

(e) That except for those identified easements and rights of way contained in any applicable reservations, restrictions, and covenants that may effect the Premises, and an airspace easement of record in Deed Book 1993, at page 263, **and a gas pipeline easement identified on the survey of the premises**, no other party has a legal interest in the Premises; that there are no liens, leases, agreements, or contracts affecting the Seller's ability to convey good and marketable title to the Premises subject to the such reservations, restrictions, and covenants as may now appear of record, except deeds of trust and assignments of rents from Corotoman, Inc. to **The City National Bank** which deeds of trust and assignments of rents shall be released as to the Premises upon Closing.

9. Corotoman hereby reserves the prior and exclusive right at any time to repurchase the Premises and all the rights conveyed or transferred to RDA in connection therewith at any time, upon and in consideration of the (i) payment in full by Corotoman of **the Infrastrastucture Loan**, (ii) payment or assumption of the Bank Loan, and

(iii) payment of foregone real estate taxes as set forth in paragraph 11 hereof. RDA hereby recognizes and agrees to Corotoman's repurchase rights, and agrees that the conveyance of **the Premises and assignment of any lease affecting the Premises** made pursuant to the rights reserved shall be with covenants of special warranty and free of all liens and encumbrances arising through RDA, excepting only those securing the **Bank Loan** if assumed by Corotoman. Corotoman shall have the obligation to repurchase the Premises for the same consideration and on the same terms as set forth in the first sentence of this Paragraph 9 at such time as the Lease expires, terminates, or is otherwise no longer effective.

10. Knowing that Corotoman is relying thereon, RDA hereby represents and warrants, and covenants and agrees with Corotoman as follows:

a) RDA and its officers, directors, employees, and servants shall not by any act or neglect breach or degrade the Lease, **any rights or obligations under this Agreement, the Long Term Loans, and the Loan Documents**, or the rights or obligations of the parties thereunder. RDA shall not by act or neglect interfere with, and shall cooperate with, Corotoman in the performance of Corotoman's obligations and the exercise of Corotoman's rights under this Agreement. RDA shall not by act or neglect interfere with, and shall cooperate with, the performance of the obligations of the parties to the Lease under the Lease, **the Long Term Loans and the Loan Documents** and the exercise of the rights of the parties to the Lease under the Lease, **the Long Term Loans and the Loan Documents**. To the extent any obligation under the **Long Term Loans and the Loan Documents** are personal to RDA or may only be performed by RDA, (for example and not by way of limitation, the provision of RDA's financial statements to Infrastructure), RDA will timely perform such obligations.

b) RDA will obtain the Long Term Loans, and shall execute and deliver such assignments of the Lease, deeds of trust, assignments of rents, UCC Financing Statements and other documents and instruments with regard to the Premises as are reasonably required in connection with the Long Term Loans. OTHERWISE, RDA shall not convey by deed of trust or mortgage, nor pledge, hypothecate, grant a security interest in, lease, sublease, transfer in whole or in part, or otherwise suffer any lien to be placed upon or asserted against the Premises or the Lease or upon any right acquired by RDA in

connection with this Agreement or the Lease, and shall promptly pay any and all amounts incurred by RDA its contractors, subcontractors, officers, directors, employees and agents that may become or be asserted as a lien or liens against the Premises or the Lease. **RDA shall not agree to, and shall resist, any change in the interest rate, amortization, due dates, repayment terms, or any other terms, covenants, conditions, or provisions of the Long Term Loans, or the Loan Documents or other agreements made in connection with the Long Term Loans without the advance written consent and agreement of Corotoman and Wellford, which consent may be withheld for any reason or for no reason.**

c) Except as provided in or pursuant to the terms of any of the **Loan Documents** or to Corotoman pursuant to rights reserved herein, RDA shall not sell, convey, assign, lease, sublease, or otherwise transfer the Premises, the Lease or this Agreement, the **Long Term Loans, the Loan Documents, or other agreement related to the Premises**, any part thereof or any interest therein, by any means, including but not limited to transfer by operation of law. Corotoman shall have no obligation of any kind, nature or degree to consent to any transfer.

d) RDA shall not cause or permit any toxic, explosive or other dangerous materials or hazardous substances (including but not limited to asbestos, PCB's and underground storage tanks) to be present upon, released upon, stored upon or used upon the Premises, except by Tenant under the Lease and then only if authorized and as permitted by the Lease. No toxic, explosive or other dangerous materials or hazardous substances (including but not limited to asbestos, PCB's and underground storage tanks) shall be disposed of on the Premises.

11. The parties agree that at such time as Corotoman purchases the Premises from RDA the "fair market value of the Premises" will be appraised by one independent and qualified appraiser picked by and with the agreement of both RDA and Corotoman. If the appraisal returned by the first appraiser is unsatisfactory to either party in any respect, then the parties will by agreement chose a second appraiser, and the average of the two appraisals will be deemed the "fair market value of the Premises" for purposes of this paragraph. If the parties are unable to agree on appraiser(s), either party may petition the United States

District Court for the appointment of an appraiser, and if such Court fails to chose an appraiser within twenty days of such petition, then the parties may petition the Circuit Court of Kanawha County for such appointment(s). The pay off amounts (principal amounts only) of the Long Term Loans will also be determined as of the date Corotoman purchases the Premises from RDA. At such time as Corotoman purchases the Premises from RDA, Corotoman will pay to the Sheriff of Kanawha County, a sum of money equal to but not to exceed the lesser of either (i) or (ii) hereafter: (i) an amount equal to real property taxes (as determined by the Assessor of Kanawha County) for each year (prorated for partial years) that the Premises is owned by RDA and neither Corotoman nor Tenant is assessed or otherwise required to pay real property taxes with respect to the Premises, or (ii) one half of the difference between (a) the fair market value of the Premises and (b) the sum of the pay off amount (principal amounts only) of the Long Term Loans, plus an amount equal to total documented expenses of Corotoman in connection with the Lease not reimbursed by the Tenant under the Lease, with the fair market value of the Premises and the pay off amount (principal amounts only) of the Long Term Loans both determined at the time Corotoman purchases the Premises from RDA.

12. Wellford joins herein to personally guarantee and adopt directly, jointly and severally as his own personal obligation, the obligations and duties of Corotoman herein. The rights and obligations of Corotoman herein and in the Lease may be assigned to, assumed by, exercised by and/or performed by Wellford.

13. Notwithstanding any other provision contained in this Agreement to the contrary, and regardless of the time or order of execution, delivery or recording thereof, the parties hereto understand and agree that: (i) the terms and conditions of this Agreement shall be and at all times remain in all respects junior, subordinate and otherwise subject to the terms and conditions of the Loan Documents and the respective rights of Infrastructure and Bank thereunder, it being the express intent and agreement of the parties hereto that the terms and conditions of this Agreement shall not in any way impair the respective rights of Infrastructure or Bank under the Loan Documents or the trustees under the Deeds of Trust, and (ii) the rights of Infrastructure and Bank under the Loan Documents shall be superior and paramount at all times to the rights and obligations of the parties hereto. Specifically, and not by way of limitation of the preceding sentence, the parties hereto agree that the

rights granted to Corotoman hereunder to repurchase the Premises, and the obligation of Corotoman to repurchase the Premises hereunder, shall be and at all times remain junior and subordinate to the liens securing the Long Term Loans and shall automatically terminate and have no further force and effect upon the foreclosure of such liens or upon the transfer of the Premises by deed in lieu of foreclosure.

14. This Agreement represents the entire agreement of the parties with respect to the matters herein and nothing shall supplement, interpret or modify this Agreement unless in writing signed by all the parties hereto.

15. This Agreements shall be construed under the laws of the State of West Virginia.

16. The representations, warranties, covenants and agreements herein shall survive the Closing and delivery of deed.

17. The parties hereto shall make such further assurances, and take such further acts, execute and reexecute, file and refile such other writings, documents and instruments as shall be reasonably required by counsel to the parties to carry out and perfect the agreements of the parties herein.

[The balance of this page left intentionally blank.]

In evidence that the parties have read this Agreement, understand it, and intend to be legally bound, witness the following signatures:

COROTOMAN, INC.

By [Signature]
Its President

REGIONAL DEVELOPMENT AUTHORITY
OF CHARLESTON - KANAWHA COUNTY,
WEST VIRGINIA, METROPOLITAN REGION

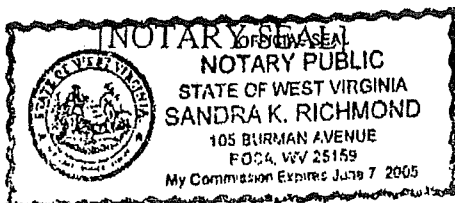
By [Signature]
Its President

[Signature]
John H. Wellford, III

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

The foregoing instrument was acknowledged before me this 5th day of August, 1999, by John H. Wellford, III, President of Corotoman, Inc., a West Virginia corporation, to be the act and deed of said corporation.

My commission expires: June 7, 2005

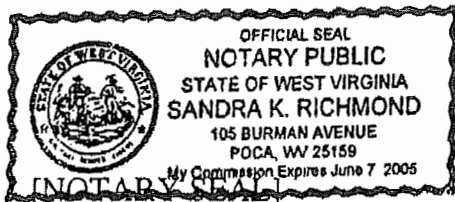


[Signature]
Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

The foregoing instrument was acknowledged before me this 5th day of August, 1999, by Charles W. MacQueen as President of the Regional Development Authority of Charleston-Kanawha County, West Virginia, Metropolitan Region, a West Virginia statutory corporation, to be the act and deed of said statutory corporation.

My commission expires: June 7, 2005.

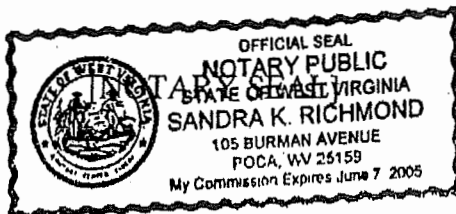


Sandra K. Richmond
Notary Public

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

The foregoing instrument was acknowledged before me this 5th day of August, 1999, by John H. Wellford, III to be his act and deed.

My commission expires: June 7, 2005.



Sandra K. Richmond
Notary Public

This instrument prepared by:
George A. Patterson, III
Bowles Rice McDavid Graff & Love, PLLC
600 Quarrier Street
Charleston, WV 25301
(304) 347-1118

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

REGIONAL DEVELOPMENT
AUTHORITY OF CHARLESTON-
KANAWHA COUNTY, WEST VIRGINIA
METROPOLITAN REGION,

Plaintiff,

Vs.

Civil Action No. 18-C-1565
Judge Carrie Webster

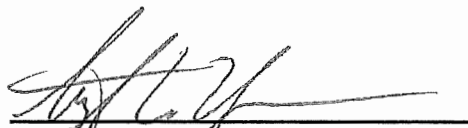
COROTOMAN, INC., and JOHN H.
WELLFORD, III, INDIVIDUALLY,

Defendants.

CERTIFICATE OF SERVICE

I, Stephen L. Thompson, counsel for the Defendants Corotoman, Inc. and John H. Wellford, III do hereby certify that I have served a true and exact copy of the foregoing ANSWER AND COUNTERCLAIM upon the following, via U.S. Mail, postage prepaid, this 11th day of February, 2019, addressed as follows:

Melissa Foster Bird, Esq.
Nelson Mullins Riley & Scarborough LLP
949 Third Avenue, Suite 200
P. O. Box 1856
Huntington, West Virginia 25719-1856



Stephen L. Thompson, Esq.

Barth & Thompson

202 Berkeley Street

Charleston, WV 25302

Telephone: (304) 342-7111

Facsimile: (304) 342-6215

*Counsel for Corotoman, Inc. and John H. Wellford,
III, Individually*

WV State Bar No. 3751